



Walsall Council

PLANNING COMMITTEE

Date: 7 APRIL 2022

REPORT OF HEAD OF PLANNING AND BUILDING CONTROL

117 SANDRINGHAM AVENUE WV12 5TG
Reference no. E21/0104

Annexes:

1. Photos of existing building.
2. Decision notice 20/1629.
3. Planning Enforcement Report to Planning Committee, 2 December 2021.
4. Officer report planning application 21/1540 (withdrawn).
5. Letter to owner from enforcement team 10 March 2022.

1.0 PURPOSE OF REPORT

- 1.1 To advise Members of ongoing site issues and to request authority to pursue planning enforcement action against the following alleged unauthorised development:
Without planning permission on the Land, the demolition of a dwelling and partial erection of replacement dwelling and outbuilding.

2.0 RECOMMENDATIONS

- 2.1 **That authority is granted to the Head of Planning and Building Control to issue an Enforcement Notice** under the Town and Country Planning Act 1990 (as amended) to require remedial actions to be undertaken as shown in 3.0.

To authorise the Head of Planning and Building Control to institute prosecution proceedings in the event of non-compliance with an Enforcement Notice.

To authorise the Head of Planning and Building Control, to amend, add to, or delete from the wording set out below stating the nature of the breaches, the reasons for taking enforcement action, the requirements of the Notice, or the boundaries of the site, in the interests of ensuring that accurate and up to date notices are served.

3.0 DETAILS OF THE ENFORCEMENT NOTICE

The Breach of Planning Control

Without planning permission on the Land, the demolition of a dwelling and partial erection of a replacement dwelling and outbuilding.

Steps Required to Remedy the Breach on the Land.

3.1 Demolish the partly constructed replacement dwelling to ground level.

3.2 Excavate and remove all below ground level foundations of the replacement dwelling.

3.3 Demolish the rear outbuilding.

3.4 Remove all asbestos if any is found and dispose of according to 3.8 below.

3.5 Stabilise and make good the wall, roof and chimney of the adjoining property 119 Sandringham Avenue where they form either individually or together Party Wall structures under the provisions of the Party Wall Act 1990.

3.6

(a) Appoint a competent person to prepare and submit to the Local Planning Authority a Coal Mining Risk Assessment Report ("the Report") to be prepared in accordance with the requirements of Coal Authority Technical Guidance Note TGN02/2021 in order to assess whether the development has had an adverse effect on the stability and safety of the Land.

(b) Where the Report may recommend remedial works, carry out the remedial works according to its recommendations and under the supervision of a competent person, and appoint the competent person to prepare a report to demonstrate to the satisfaction of the Local Planning Authority that the works required in the Report have been carried out to ensure the stability and safety of the Land.

3.7 Remove the white painted security boards and white painted entrance gates positioned on or close to the boundary.

3.8 Remove and dispose of all building, scaffolding and waste materials arising from completion of steps 3.1 to 3.7, to a site licensed to accept them.

3.9 Make good and level the ground after completion of requirements 3.1-3.8 to equivalent ground levels as they were prior to the alleged unauthorised development, and reinstate the Land to grass.

3.10 Period for Compliance

Three months in the case of 3.1 and 3.3 above.

Four months in the case of 3.2, 3.4 and 3.5 above.

Eight months in the case of 3.6, 3.7 and 3.8 above.

Nine months in the case of 3.9 above.

4.0 SITUATION

4.1 Site Description

117 Sandringham Avenue was formerly a typical semi-detached brick under tile two storey dwelling. The site is in a prominent corner position at the junction of Arundel Road. No.117 shares a party wall with No.119 Sandringham Avenue. Prior to the alleged unauthorised development taking place, No.117 had the following characteristics (**Annex 3 Plan 1**):

- The main two storey element had a frontage of 5.9m and a depth of 8.8m.
- The additional single storey side extension had a frontage of 6.3m and a depth of 8.8m. The side extension was partly an additional bedroom with store behind and partly a single garage.
- Total footprint of the dwelling was 107sqm.

4.2 Planning Background

Planning permission was granted for a *two storey side extension and single storey front extension for front porch and bay window* ref 20/1629 on 17 May 2021 (**Annex 3 Plan 2** “the approved scheme”). Essentially the two storey element as it was at the time would double in width (appearing from the front), and a further two storey element (albeit with a stepped down roofline) would be added alongside. A covered porch would feature to the front.

The approved scheme would have a frontage width of 12.8m, being 0.6m wider than the former width. Footprint of the approved scheme would be the same as before, albeit with an additional front porch of 6sqm.

4.3 Enforcement Background

In July 2021 the planning enforcement team commenced investigations into reports that the build had not progressed as approved under application 20/1629 (enforcement case reference E21/0104). Allegations of damage to 119 Sandringham Avenue were first received on 19 July 2021. The site has been visited three times by enforcement officers and a thorough inspection of the partly completed replacement dwelling carried out on 17 August 2021. Brick walls are completed, floors and staircases installed and the roof has been fitted and tiled. The structure remains supported by scaffolding. There is also a partly constructed outbuilding to the rear. All work on the dwelling has ceased and the site has been secured.

A report was presented to Planning Committee on 2 December 2021 which provided an update on the situation at the time. The report requested Members take note of the investigation and agree to its recommendations. The Committee Report and recommendations can be found at **Annex 3** to this report.

4.4 Building Control and Regulations

The Building Regulations process continues to be dealt with by *Assent Building Control* which is a company acting on behalf of the owner, independently from the Local Authority. For this reason Walsall Council Building Control officers have not carried out formal inspections under this process. Neither have they carried out a structural assessment. That said, an inspection has been carried out on 11 February 2022 in response to a claim the partially completed replacement dwelling is dangerous. No evidence has been found of it being a danger to public safety. Similarly, no evidence has been found that the party wall

between 117 and 119 Sandringham Avenue has been damaged to the extent it poses a danger to the neighbour. That said, concerns have been raised about build quality and construction methods. They may account for (for example) plaster falling off and hair line cracks in the Party Wall.

It is known that the owner of 119 Sandringham Avenue has, and continues to pursue matters relevant to the Party Wall Act 1990 through the civil courts. To date, the replacement dwelling has not been approved under the Building Regulations process.

4.5 Current Planning Situation

A retrospective planning application submitted under Section 73A of the Town and Country Planning Act was submitted on 1 November 2021 intended to regularise the as built scheme, reference 21/1540. Plans submitted with that application are at **Annex 3 Plan 3**. The planning authority report for application 21/1540 (**Annex 4**) was placed on the agenda for Thursday 10 March 2022. However once published, the application was withdrawn prior to determination. Correspondence and discussion with the agent have established an intention to submit a new application intended to deliver a policy compliant scheme. It is believed the planning application will illustrate alterations in form and scale to align the dwelling as far as possible with the approved scheme 20/1629.

The report presented to Planning Committee in December 2021 said the outcome of application 21/1540 would inform a review of enforcement options. It is considered that the late withdrawal of the application is tantamount to it having been refused, since that was the officer recommendation. Further, there are significant concerns as to how the partially completed structure could be transformed into a policy compliant scheme without significant alterations to structure and fabric, even acknowledging the dwelling is only partially completed.

5.0 ENFORCEMENT RECOMMENDATIONS

As set out at Section 3 above, the recommended course of action is to demolish the dwelling and outbuilding. Members are reminded that such action cannot be justified simply in response to planning application 21/1540 being withdrawn, nor simply due to weight of public opinion. Lesser steps to remedy the harm must be considered beforehand.

5.1 Lesser steps as an alternative to demolition.

Recommended Reason 1 for refusal of 21/1540 explains that the replacement dwelling is unacceptable in terms of scale and design. Crucially, this is at least in part due to issues of footprint, height and position close to Arundel Road. Further it is noted that the roof apex of the replacement dwelling forms one continuous line along its full length, whereas the extension roof apex approved under 20/1629 is stepped down and the front roof plane stepped back from the plane of the host dwelling. The combination of these details creates an extension which appears subservient to the original dwelling. The effect of the continuous roofline has effectively created a single very substantial dwelling,

which is not in character or proportion to the streetscene, nor to the much smaller 119 Sandringham Avenue, the other half of the semi.

It would be very difficult to alter the partially built replacement dwelling to achieve the characteristics of the approved extension, since very considerable and prolonged works would be required to alter both footprint and height together. An enforcement notice seeking to achieve alterations would be complex and require a very long compliance period. In practice, the amount of work required would be considered similar to demolition.

Removal of the front porch could be considered an option to reduce the footprint and massing of the replacement dwelling. However in this instance the appearance of the dwelling would be severely harmed, creating a single “box shaped” dwelling of no architectural interest. It would still have significant impact upon the streetscene, and contrast sharply with its semi-detached neighbour (119 Sandringham Avenue). Therefore removal of the porch alone would not be a sufficient remedy to address the recommended reason 1 for refusal of 21/1540.

For the avoidance of doubt, the unauthorised outbuilding to the rear is considered an intrinsic part of the whole unauthorised scheme and cannot be separated out to the extent it could be excluded from the enforcement notice. The outbuilding is not permitted development as rights do not apply to a partially completed and unoccupied dwelling. It cannot be assumed that the outbuilding would be granted planning permission if it were treated in isolation from the partially constructed dwelling.

Recommended Reason 2 for refusal relates to the absence of a Coal Mining Risk Assessment Report. The owner has failed to demonstrate the safety and stability of the site. In the event safety and stability has been compromised by the partial erection of the replacement dwelling, it is only considered possible to remediate by clearance of the site, rather than altering part of the footprint (eg porch removal) and structure above ground.

5.2 Recommended Demolition

Material considerations have been considered in the test of expediency and proportionality, having full regard to the Council's Local Planning Enforcement plan and the National Planning Policy Framework where it refers to enforcement at Para.59. Taken together material considerations are considered to add sufficient weight in favour of demolition. They are as follows:

- There is clear public interest in resorting to demolition, including remedying as soon as reasonably possible the hardship endured by the owner of 119 Sandringham Avenue. The hardship has been demonstrated by the civil court action pursued separately. Lesser steps in an enforcement notice as described above are unlikely to secure a long term solution and would prolong the situation causing harm to amenity. Significant concerns remain about build quality and construction methods, evidenced by a recent safety inspection by the Council Building Control Officer. It is considered material to the expediency test that Building

Regulations approval has not yet been granted. In the event Building Regulations approval is forthcoming prior to demolition, the situation could be reviewed by the Council, and the enforcement notice withdrawn, though having regard to other reasons for the enforcement notice being served. An award of costs could be made against the Council in an appeal situation.

- Following withdrawal of application 21/1540 the owner was invited to commit to a programme of demolition and works to make good the site. **(Annex 5)** No agreement has been reached. Even if the owner were to agree to demolition and timescales, there is no guarantee of completion. Planning Committee's authority to serve an enforcement notice provides a fall-back position in the event agreement is reached.
- Any decision requiring lesser steps in an enforcement notice, or indeed not to serve an enforcement notice at all could be challenged by Judicial Review.
- An enforcement notice has a right of appeal, grounds for which may include in this case that planning permission ought to be granted, or the steps to remedy the harm are excessive.

6.0 FINANCIAL IMPLICATIONS

An appeal against an enforcement notice could be subject to an application for a full or partial award of the appellant's costs in making an appeal if it was considered that the Council had acted unreasonably. Planning applications may also be submitted that require an application fee.

7.0 POLICY IMPLICATIONS

The report recommends enforcement action in order to seek compliance with planning policies. The following planning policies are relevant in this case:

7.1 National Planning Policy Framework (NPPF) revised 20 July 2021

The NPPF sets out the Government's position on the role of the planning system in both plan-making and decision-taking. It states that the purpose of the planning system is to contribute to the achievement of sustainable development, in economic, social and environmental terms, and it emphasises a "*presumption in favour of sustainable development*".

All the core planning principles have been reviewed and those relevant in this case are, for example:

- Good design is a key aspect of sustainable development, creates better places in which to live and work and helps make development acceptable to communities
- Developments will function well and add to the overall quality of the area, not just for the short term but over the lifetime of the development
- Developments are visually attractive as a result of good architecture, layout and appropriate and effective landscaping;

Key provisions of the NPPF particularly relevant in this case:

- NPPF 2 – Achieving sustainable development
- NPPF 4 – Decision making
- NPPF 5 – Delivering a sufficient supply of homes
- NPPF 12 - Achieving well-designed places

7.2 Local Policy

Black Country Core Strategy

- ENV3 Design Quality

Saved Unitary Development Plan policies

- GP2 Environmental Protection
- ENV32: Design and Development Proposals
- ENV10: Pollution

Walsall Site Allocations Document (SAD)

- HC2: Development of Other Land for Housing

Policies are available to view online:

http://cms.walsall.gov.uk/planning_policy

Designing Walsall SPD

- DW3: Character
- Appendix D

8.0 LEGAL IMPLICATIONS

Non-compliance with an Enforcement Notice constitutes an offence. In the event of non-compliance, the Council may instigate legal proceedings. The Council may also take direct action to carry out works and recover the costs of those works from the person on whom the Enforcement Notice was served. Any person on whom an Enforcement Notice is served has a right of appeal to the Secretary of State.

9.0 EQUAL OPPORTUNITY IMPLICATIONS

Article 8 and Article 1 of the first protocol to the Convention on Human Rights state that a person is entitled to the right to respect for private and family life, and the peaceful enjoyment of his/her property. However, these rights are qualified in that they must be set against the general interest and the protection of the rights and freedom of others. In this case, the wider impact of the development and its use overrules the owner's right to the peaceful enjoyment of his property.

The Equality Act 2010. The Council has had regard to its duties under the Equality Act 2010 and considers that the issue of the notice will not affect the exercise of those duties under S149 to (a) eliminate discrimination, harassment, victimisation and any other conduct that is prohibited by or under this Act; (b). Advance equality of opportunity between persons who share a relevant protected characteristic and persons who do not share it; (c). foster good relations between persons who share a relevant protected characteristic and persons who do not share it.

10.0 WARD(S) AFFECTED

Willenhall

11.0 CONSULTEES

Building Control

12.0 CONTACT OFFICERS

Frank Whitley Senior Planning Enforcement Officer

11.0 BACKGROUND PAPERS

As above